

1 Fred W. Schwinn (SBN 225575)
2 CONSUMER LAW CENTER, INC.
3 12 South First Street, Suite 1014
4 San Jose, California 95113-2418
5 Telephone Number: (408) 294-6100
6 Facsimile Number: (408) 294-6190
7 Email Address: fred.schwinn@sjconsumercounsel.com

5 Attorney for Plaintiff
SUSAN RAE OWENS

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

10 SUSAN RAE OWENS,

Plaintiff,

V.

13 ERICA L. BRACHFELD, A
14 PROFESSIONAL CORPORATION, D/B/A
15 BRACHFELD & ASSOCIATES, P.C., D/B/A
16 LAW OFFICES OF BRACHFELD &
ASSOCIATES, P.C., a California corporation,
and ERICA LYNN BRACHFELD,
individually and in her official capacity.

Defendants.

Case No. 07-04400-JF-PVT

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT, OR IN THE
ALTERNATIVE, PARTIAL
SUMMARY ADJUDICATION**

[Fed. R. Civ. P. 56]

Date: February 1, 2008
Time: 9:00 a.m.
Judge: Honorable Jeremy Fogel
Courtroom: 3, 5th Floor
Place: 280 South First Street
San Jose, California

20 COMES NOW the Plaintiff, SUSAN RAE OWENS (hereinafter "Plaintiff"), by and through
21 her attorney Fred W. Schwinn of the Consumer Law Center, Inc., and pursuant to Fed. R. Civ. P.
22 56 and Civil L.R. 56-1, hereby submits her Memorandum of Points and Authorities in Support of
23 Motion for Summary Judgment filed herein.

TABLE OF CONTENTS

1	Table of Contents	i
2	Table of Authorities	iii
3	I. INTRODUCTION	1
4	II. PROCEDURAL HISTORY	1
5	III. FACTS OF THE CASE	2
6	IV. STANDARD OF REVIEW	3
7	V. ARGUMENTS AND AUTHORITIES	4
8	A. THE "LEAST SOPHISTICATED CONSUMER" STANDARD IS USED TO ANALYZE VIOLATIONS OF THE FDCPA	4
9	B. UNDER THE STRICT LIABILITY STANDARD OF THE FDCPA, DEFENDANTS HAVE COMMITTED NUMEROUS VIOLATIONS OF THE ACT, AS SEEN FROM THE PERSPECTIVE OF THE "LEAST SOPHISTICATED CONSUMER."	6
10	C. PLAINTIFF IS A "CONSUMER" AS THAT TERM IS DEFINED BY 15 U.S.C. § 1692a(3); DEFENDANTS ARE EACH A "DEBT COLLECTOR" AS THAT TERM IS DEFINED BY 15 U.S.C. §1692a(6); THE DEBT BEING COLLECTED BY DEFENDANTS WAS A "DEBT" AS THAT TERM IS DEFINED BY 15 U.S.C. § 1692a(5) AND A "CONSUMER DEBT" AS THAT TERM IS DEFINED BY CAL. CIVIL CODE § 1788.2(f)	6
11	D. DEFENDANTS HAVE VIOLATED NUMEROUS PROVISIONS OF THE FDCPA	7
12	1. DEFENDANTS VIOLATED THE FDCPA BY SENDING A COLLECTION LETTER IN AN ENVELOPE WHICH DISPLAYED PLAINTIFF'S PERSONAL FINANCIAL INFORMATION	8
13	2. DEFENDANTS USED FALSE BUSINESS NAMES INSTEAD OF THEIR TRUE BUSINESS NAME WHILE ATTEMPTING TO COLLECT A CONSUMER DEBT FROM PLAINTIFF.	9
14	E. B&A HAS VIOLATED THE RFDCPA.	10
15	1. B&A IS A "DEBT COLLECTOR" WITHIN THE MEANING OF CALIFORNIA CIVIL CODE § 1788.2(c)	11
16	2. B&A HAS VIOLATED CAL. CIVIL CODE § 1788.17	12
17	3. B&A HAS VIOLATED CAL. CIVIL CODE §§ 1788.12(c), 1788.12(d) AND 1788.13(a)	12
18	F. THIS COURT SHOULD AWARD PLAINTIFF THE MAXIMUM STATUTORY DAMAGE AMOUNT OF \$1,000 UNDER THE FDCPA	12

1	G. PLAINTIFF SHOULD BE AWARDED \$1,000 UNDER CAL. CIVIL CODE § 1788.30(b)	13
2	H. PLAINTIFF SHOULD BE AWARDED \$1,000 UNDER CAL. CIVIL CODE § 1788.17	13
3	I. BOTH CONGRESS AND THE CALIFORNIA LEGISLATURE HAVE EXPRESSED THEIR INTENT THAT THE REMEDIES FOR VIOLATIONS OF THE FDCPA AND RFDCPA BE CUMULATIVE	14
4	J. PLAINTIFF HAS A STATUTORY RIGHT TO ATTORNEY'S FEES AND COSTS	15
5	VI. CONCLUSION	15
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

TABLE OF AUTHORITIES

CASES

3	<i>Ables v. JBC Legal Group, P.C.</i> , 227 F.R.D. 541 (N.D. Cal. 2005)	11
4	<i>Adams v. CIR Law Offices, LLP</i> , 2007 U.S. Dist. LEXIS 63808 (S.D. Cal. August 29, 2007)	11
5	<i>Alkan v. Citimortgage, Inc.</i> , 336 F. Supp. 2d 1061 (N.D. Cal. 2004)	14
6	<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986)	3
7	<i>Avila v. Rubin</i> , 84 F.3d 222 (7 th Cir. 1996)	5
8	<i>Baker v. G.C. Services</i> , 677 F.2d 775 (9 th Cir. 1982)	4, 6
9	<i>Bentley v. Great Lakes Collection Bureau</i> , 6 F.3d 60 (2 nd Cir. 1993)	5, 8
10	<i>Brinson v. Linda Rose Joint Venture</i> , 53 F.3d 1044 (9 th Cir. 1995)	4
11	<i>Cacace v. Lucas</i> , 775 F. Supp. 502 (D. Conn. 1990)	5, 7
12	<i>Chapman v. ACB Business Services, Inc.</i> , 1997 U.S. Dist. LEXIS 23743 (S.D. W.V. February 13, 1997)	14
13	<i>Clomon v. Jackson</i> , 988 F.2d 1314 (2 nd Cir. 1993)	5
14	<i>De Coito v. Unifund Corp.</i> , 2004 U.S. Dist. LEXIS 23729 (D. HI January 4, 2004)	6
15	<i>Edstrom v. A.S.A.P. Collection Services</i> , 2005 U.S. Dist. LEXIS 2773 (N.D. Cal. February 22, 2005)	15
16	<i>EEOC v. Farmer Bros. Co.</i> , 31 F.3d 891 (9 th Cir. 1994)	4
17	<i>Graziano v. Harrison</i> , 950 F.2d 107 (3 rd Cir. 1991)	5
18	<i>Hartman v. Meridian Financial Services, Inc.</i> , 191 F. Supp. 2d 1031 (W.D. Wis. 2002)	7
19	<i>Hodges v. Armada (In re Hodges)</i> , 342 B.R. 616 (E.D. Bankr. Wash. 2006)	8
20	<i>Jeter v. Credit Bureau</i> , 760 F.2d 1168 (11 th Cir. 1985)	5
21	<i>Lutge v. Eskanos & Adler, P.C.</i> , 2007 U.S. Dist. LEXIS 40570 (N.D. Cal. May 23, 2007)	11
22	<i>Mann v. Acclaim</i> , 348 F. Supp. 2d 923 (S.D. Ohio 2004)	14
23	<i>Matsushita Elec. Indus. Co. v. Zenith Radio Corp.</i> , 475 U.S. 574 (1986)	3, 4
24	<i>McCartney v. First City Bank</i> , 970 F.2d 45 (5 th Cir. 1992)	6
25		
26		
27		
28		

1	<i>Navarro v. Eskanos & Adler</i> , 2007 U.S. Dist. LEXIS 15046 (N.D. Cal. February 20, 2007)	11
2	<i>Picht v. Jon R. Hawks, Ltd.</i> , 236 F.3d 446 (8 th Cir. 2001)	7, 8
3	<i>Pipiles v. Credit Bureau, Inc.</i> , 886 F.2d 22 (2 nd Cir. 1989)	15
4	<i>Pittman v. J.J. Mac Intyre Co. of Nevada, Inc.</i> , 969 F. Supp. 609 (D. Nev. 1997)	8
5	<i>Perez v. Perkiss</i> , 742 F.Supp. 883 (D. Del. 1990)	15
6	<i>Riveria v. MAB Collections</i> , 682 F. Supp. 174 (W.D.N.Y. 1988)	5, 13
7	<i>Romine v. Diversified Collection Servs.</i> , 155 F.3d 1142 (9 th Cir. 1998)	6
8	<i>Russell v. Equifax A.R.S.</i> , 74 F.3d 30 (2 nd Cir. 1996)	5, 8
9	<i>Saucier v. Katz</i> , 533 U.S. 194 (2001)	4
10	<i>Sakuma v. First National Credit Bureau</i> , 1989 U.S. Dist. LEXIS 19120 (D. HI. November 15, 1989)	14
11	<i>Schneider v. TRW, Inc.</i> , 938 F.3d 986 (9 th Cir. 1990)	4
12	<i>Shulick v. Credit Bureau Collection Services</i> , 2004 U.S. Dist. LEXIS 1552 (E.D. Pa. February 3, 2004)	8
13	<i>Stockton Wire Products, Inc. v. K-Lath Corp.</i> , 440 F.2d 782 (9 th Cir. 1971)	3
14	<i>Stojanovski v. Strobl & Manoogian, P.C.</i> , 783 F. Supp. 319 (E.D. Mich. 1992)	5
15	<i>Swanson v. Southern Oregon Credit Serv.</i> , 869 F.2d 1222 (9 th Cir. 1988)	5
16	<i>T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass'n</i> 809 F.2d 626 (9 th Cir. 1987)	4
17	<i>Taylor v. Perrin Landry, deLaunay & Durand</i> , 103 F.3d 1232 (5 th Cir. 1997)	5, 8
18	<i>Terran v. Kaplan</i> , 109 F.3d 1428 (9 th Cir. 1977)	5
19	<i>Tolentino v. Friedman</i> , 46 F.3d 645 (7 th Cir. 1995)	13
20	<i>Traverso v. Sharinn</i> , 1989 U.S. Dist. LEXIS 19100 (D. Conn. Sept. 15, 1989)	7
21	<i>Turner v. Cook</i> , 362 F.3d 1219 (9 th Cir. 2004)	6
22	<i>United States v. National Financial Services</i> , 98 F.3d 131 (4 th Cir. 1996)	5
23	<i>United States v. Trans Continental Affiliates</i> , 1997 U.S. Dist. LEXIS 388 (N.D. Cal. January 8, 1997)	6
24	<i>Zagorski v. Midwest Billing Services, Inc.</i> , 178 F.3d 116 (7 th Cir. 1997)	15
25		
26		
27		
28		

1	<u>STATUTES</u>	
2	15 U.S.C. § 1692(e)	4, 6
3	15 U.S.C. § 1692c(b)	9
4	15 U.S.C. § 1692d	5, 9
5	15 U.S.C. § 1692d(3)	9
6	15 U.S.C. § 1692e	5
7	15 U.S.C. § 1692e(14)	10
8	15 U.S.C. § 1692f	5, 9
9	15 U.S.C. § 1692k(a)(2)(A)	13
10	15 U.S.C. § 1692k(a)(3)	15
11	15 U.S.C. § 1692n	14
12	Cal. Civil Code § 1788.12(d)	12
13	Cal. Civil Code § 1788.13(a)	12
14	Cal. Civil Code § 1788.17	12
15	Cal. Civil Code § 1788.2(c)	11
16	Cal. Civil Code § 1788.30(b)	13
17	Cal. Civil Code § 1788.32	14
18	Cal. Civil Code § 1788.30(c)	15
19	<u>RULES</u>	
20	Fed. R. Civ. P. 56(c)	3
21	Fed. R. Civ. P. 56(e)	4
22		
23		
24		
25		
26		
27		
28		

I. INTRODUCTION

2 This case was brought by Plaintiff, Susan Rae Owens (hereinafter “Owens”), against
3 Defendant, Erica L. Brachfeld, A Professional Corporation, (hereinafter “B&A”), and Defendant,
4 Erica Lynn Brachfeld (hereinafter “Brachfeld”), for various violations of the federal Fair Debt
5 Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (hereinafter “FDCPA”), and the California
6 Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 et seq. (hereinafter
7 “RFDCPA”), which prohibit debt collectors from engaging in abusive, deceptive and unfair
8 collection practices. Generally, Plaintiff is alleged to have owed a consumer debt which was
9 consigned, placed or otherwise transferred to Defendants for collection from Plaintiff. The debt
10 being collected stemmed from a consumer credit card account financed by Capital One Bank, which
11 was later sold, assigned or otherwise transferred to NCO Financial Systems, Inc. Plaintiff contends
12 that the collection letter sent by Defendants was sent in an envelope which contained a window
13 through which information printed on the collection letter could be seen by anyone who handled the
14 collection letter. Further, the collection letter and the envelope it was mailed in failed to state the
15 true legal name of Defendants’ business entity, instead using false business names which are not
16 registered as California corporations or otherwise entitled to do business in the state of California.

II. PROCEDURAL HISTORY

18 On August 27, 2007, Owens filed a Complaint in this Fair Debt Collection Practices Act suit
19 against the Defendants.¹ Defendants filed an Answer containing only a general denial and state law
20 affirmative defenses on September 21, 2007.² On September 22, 2007, Plaintiff's counsel sent
21 Defendants' counsel a letter outlining the deficiencies in the filed Answer and suggesting that
22 Defendants avail themselves of the limited opportunity to file an Amended Answer provided by Fed.
23 R. Civ. P. 15(a).³

1 Doc. 1.

2 Doc. 5.

³ Declaration of Fred W. Schwinn in Support of Motion for Summary Judgment (hereinafter “Schwinn Declaration”) ¶3.

1 On December 28, 2007, Plaintiff's Motion for Summary Judgment was filed herein.

2 **III. FACTS OF THE CASE**

3 Plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692(a)(3) and a "debtor" within
4 the meaning of Cal. Civil Code § 1788.2(h).⁴ Plaintiff resides in Santa Clara County.⁵

5 On a date or dates unknown to Plaintiff, Plaintiff incurred a financial obligation, namely a
6 credit card account issued by Capital One Bank (hereinafter "the debt").⁶ The debt was incurred
7 primarily for personal, family or household purposes and is therefore a "debt" as that term is defined
8 by 15 U.S.C. § 1692a(5), and a "consumer debt" as that term is defined by Cal. Civil Code §
9 1788.2(f).⁷ The debt was sold, assigned or otherwise transferred to NCO Financial Systems, Inc.,
10 and, thereafter, was consigned, placed or otherwise transferred to Defendants for collection from
11 Plaintiff.⁸

12 Defendant, B&A, and Defendant, Brachfeld, are each a "debt collector" as that term is
13 defined by 15 U.S.C. § 1692a(6).⁹ Defendant, B&A, is a "debt collector" as that term is defined by
14 Cal. Civil Code § 1788.2(c).¹⁰ On or about September 18, 2006, Defendants mailed Plaintiff a
15 collection letter in an attempt to collect the debt.¹¹ The collection letter was sent in an envelope
16 which contained a window through which information printed on the collection letter could be seen
17 by anyone who handled the envelope.¹²

18

19 ⁴ Complaint (Doc. 1) ¶¶ 6, 26 and 36; Declaration of Susan Rae Owens in Support of Motion
for Summary Judgment (hereinafter "Owens Declaration") ¶4.

20 ⁵ Complaint (Doc. 1) ¶6; Owens Declaration ¶3.

21 ⁶ Complaint (Doc. 1) ¶10; Owens Declaration ¶4.

22 ⁷ Complaint (Doc. 1) ¶¶10, 29 and 38; Owens Declaration ¶4.

23 ⁸ Complaint (Doc. 1) ¶¶ 11 and 12; Owens Declaration ¶¶ 5 and 6.

24 ⁹ Complaint (Doc. 1) ¶¶ 7 and 8; Schwinn Declaration ¶15, Exhibit "12."

25 ¹⁰ Complaint (Doc. 1) ¶¶ 7 and 37; Schwinn Declaration ¶15, Exhibit "12."

26 ¹¹ Complaint (Doc. 1) ¶¶ 13, 14 and 15; Owens Declaration ¶¶ 7, 8 and 9; Exhibit "1."

27 ¹² Complaint (Doc. 1) ¶18; Owens Declaration ¶¶ 10 and 11.

1 The collection letter stated that the name of Defendants' business, company or organization
2 as "Law Offices of Brachfeld & Associates, P.C."¹³ However, the "Law Offices of Brachfeld &
3 Associates, P.C." is not a California corporation or a registered foreign corporation and is therefore
4 not authorized to conduct business in the state of California.¹⁴

5 Moreover, the collection letter and collection envelope stated the name of Defendants'
6 business, company or organization as "Brachfeld & Associates, P.C."¹⁵ However, "Brachfeld &
7 Associates, P.C." is not a California corporation or a registered foreign corporation and is therefore
8 not authorized to conduct business in the state of California.¹⁶

IV. STANDARD OF REVIEW

10 The standard of review for a motion for summary judgment is that the moving party is
11 entitled to summary judgment when the evidence shows that there is no genuine issue of material
12 fact, and that the moving party is entitled to judgment as a matter of law.¹⁷ The Court must
13 determine “whether there is the need for a trial—whether, in other words, there are any genuine
14 factual issues that properly can be resolved only by a finder of fact because they may reasonably be
15 resolved in favor of either party.”¹⁸ “Only disputes over facts that might affect the outcome of the
16 suit under governing law will . . . preclude summary judgment.” *Id.* at 248. When the record taken
17 as a whole would not persuade a rational trier of fact to find for the nonmoving party, there is no
18 genuine issue for trial.¹⁹ In some cases, the evidence of the opposing party is so weak as to “fail[]

¹³ Complaint (Doc. 1) ¶20; Owens Declaration ¶12; Exhibit “1.”

¹⁴ Complaint (Doc. 1) ¶21; Schwinn Declaration ¶¶ 7, 8, 9 and 13; Exhibit “10.”

¹⁵ Complaint (Doc. 1) ¶ 22; Owens Declaration ¶13; Exhibit “2.”

¹⁶ Complaint (Doc. 1) ¶23; Schwinn Declaration ¶¶ 10, 11 and 14; Exhibit “11.”

¹⁷ Fed. R. Civ. P. 56(c); *Stockton Wire Products, Inc. v. K-Lath Corp.*, 440 F.2d 782 (9th Cir. 1971).

¹⁸ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

¹⁹ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

1 to raise a material issue of fact.²⁰

2 The movant must carry this burden of “identifying those parts of the record that indicate the
 3 absence of a genuine issue of material fact.”²¹ Once this burden is met, the non-movant is required
 4 to “come forward with specific facts showing that there is a genuine issue for trial” as to elements
 5 essential to the movant’s claim.²² The non-movant must show more than “some metaphysical doubt
 6 as to the material facts;”²³ he or she must “set forth specific facts showing that there is a genuine
 7 issue for trial.” Fed. R. Civ. P. 56(e).

8 The Court must resolve all disputed facts and weigh all evidence “in the light most favorable
 9 to the nonmoving party.”²⁴ However, the nonmoving party may not rely upon mere allegations or
 10 denials contained in its pleadings or briefs, but must come forward with specific facts showing the
 11 presence of a genuine issue for trial.²⁵ One of the principal purposes of the summary judgment rule
 12 is to isolate and dispose of factually unsupported claims or defenses, and the rule should be
 13 interpreted in a way that allows it to accomplish this purpose. *Id.* at 323-324.

14 **V. ARGUMENTS AND AUTHORITIES**

15 **A. THE “LEAST SOPHISTICATED CONSUMER” STANDARD IS USED TO
 16 ANALYZE VIOLATIONS OF THE FDCPA.**

17 The FDCPA states that its purpose, in part, is “to eliminate abusive debt collection practices
 18 by debt collectors.” 15 U.S.C. § 1692(e). The statute is designed to protect consumers from
 19 unscrupulous collectors, whether or not there is a valid debt.²⁶ The FDCPA broadly prohibits unfair
 20

21 ²⁰ *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 906 (9th Cir. 1994).

22 ²¹ *Brinson v. Linda Rose Joint Venture*, 53 F.3d 1044, 1048 (9th Cir. 1995).

23 ²² *Schneider v. TRW, Inc.*, 938 F.3d 986, 991 (9th Cir. 1990).

24 ²³ *Matsushita Elec. Indus. Co.*, 475 U.S. at 586.

25 ²⁴ *T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Ass’n*, 809 F.2d 626, 630-31
 26 (9th Cir. 1987).

27 ²⁵ *Saucier v. Katz*, 533 U.S. 194, 212, n.2, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001).

28 ²⁶ *Baker v. G.C. Services*, 677 F.2d 775, 777 (9th Cir. 1982).

1 or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and
 2 any false, deceptive or misleading statements, in connection with the collection of a debt. 15 U.S.C.
 3 §§ 1692d, 1692e, and 1692f.

4 The United States Court of Appeals for the Ninth Circuit has held that whether a
 5 communication or other conduct violates the FDCPA is to be determined by analyzing it from the
 6 perspective of the “least sophisticated consumer.”²⁷ The “least sophisticated consumer” standard
 7 is objective—not subjective. *Id.* at 1227. Courts determine whether the “least sophisticated
 8 consumer” would be misled or deceived by the statements made as a matter of law.²⁸

9 “The basic purpose of the least sophisticated consumer standard is to ensure that the FDCPA
 10 protects all consumers, the gullible as well as the shrewd.”²⁹ “While protecting naive consumers,
 11 the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices
 12 by preserving a quotient of reasonableness and presuming a basic level of understanding and
 13 willingness to read with care.”³⁰

14 “As the FDCPA is a strict liability statute, proof of one violation is sufficient to support
 15 summary judgment for the plaintiff.”³¹ “Because the Act imposes strict liability, a consumer need
 16 not show intentional conduct by the debt collector to be entitled to damages.”³² Furthermore, the
 17 question of whether the consumer owes the alleged debt has no bearing on a suit brought pursuant

18 ²⁷ *Swanson v. Southern Oregon Credit Serv.*, 869 F.2d 1222, 1225 (9th Cir. 1988).

19 ²⁸ *Terran v. Kaplan*, 109 F.3d 1428, 1432 (9th Cir. 1977); *Swanson*, 896 F.2d at 1225-26.

21 ²⁹ *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1993).

22 ³⁰ *United States v. National Financial Services*, 98 F.3d 131, 136 (4th Cir. 1996) (citations
 23 omitted); *See also Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *Bentley v. Great Lakes
 24 Collection Bureau*, 6 F.3d 60 (2nd Cir. 1993); *Jeter v. Credit Bureau*, 760 F.2d 1168 (11th Cir. 1985);
Graziano v. Harrison, 950 F.2d 107, 111 (3rd Cir. 1991); *Avila v. Rubin*, 84 F.3d 222, 226-27 (7th
 Cir. 1996) (“the standard is low, close to the bottom of the sophistication meter”).

25 ³¹ *Cacace v. Lucas*, 775 F. Supp. 502, 505 (D. Conn. 1990); *See also Stojanovski v. Strobl
 26 & Manoogian, P.C.*, 783 F. Supp. 319, 323 (E.D. Mich. 1992); *Riveria v. MAB Collections, Inc.*,
 27 682 F. Supp. 174, 178-9 (W.D.N.Y. 1988).

28 ³² *Russell*, 74 F.3d at 33; *See also Taylor v. Perrin Landry, deLaunay & Durand*, 103 F.3d
 1232, 1236 (5th Cir. 1997); *Bentley*, 6 F.3d at 62; *Clomon*, 988 F.2d at 1318.

1 to the FDCPA.³³

2 It is important to note that by protecting consumers from abusive, deceptive and unfair
 3 collection practices, the FDCPA insures that those debt collectors who refrain from using abusive
 4 debt collection practices are not competitively disadvantaged. 15 U.S.C. § 1692(e). Moreover, the
 5 FDCPA further insures that regardless of whether a consumer owes a debt, he or she will be treated
 6 in a reasonable and civil manner.³⁴

7 Accordingly, Plaintiff asserts that whether or not Defendants violated the FDCPA must be
 8 evaluated from the standpoint of the “least sophisticated consumer.”

9 **B. UNDER THE STRICT LIABILITY STANDARD OF THE FDCPA, DEFENDANTS
 10 HAVE COMMITTED NUMEROUS VIOLATIONS OF THE ACT, AS SEEN FROM
 THE PERSPECTIVE OF THE “LEAST SOPHISTICATED CONSUMER.”**

11 To establish a violation of the FDCPA, Plaintiff must show that: (1) Plaintiff is a consumer,
 12 (2) Plaintiff has been the object of collection activity arising from a consumer debt, (3) Defendant
 13 collecting the “debt” is a “debt collector” as defined in the Act, and (4) Defendant has engaged in
 14 any act or omission in violation of the prohibitions or requirements of the Act.³⁵ The remainder of
 15 this memorandum will show that all four (4) of these elements are satisfied as a matter of law.

16 **C. PLAINTIFF IS A “CONSUMER” AS THAT TERM IS DEFINED BY 15 U.S.C. §
 17 1692a(3); DEFENDANTS ARE EACH A “DEBT COLLECTOR” AS THAT TERM
 18 IS DEFINED BY 15 U.S.C. §1692a(6); THE DEBT BEING COLLECTED BY
 DEFENDANTS WAS A “DEBT” AS THAT TERM IS DEFINED BY 15 U.S.C. §
 1692a(5) AND A “CONSUMER DEBT” AS THAT TERM IS DEFINED BY CAL.
 CIVIL CODE § 1788.2(f).**

20 To prove her claims under the FDCPA, Plaintiff must show that she is a “consumer” as that
 21 term is defined by 15 U.S.C. § 1692a(3) and Defendant is a “debt collector” as that term is defined
 22 by 15 U.S.C. § 1692a(6). Plaintiff must also show that Defendants were attempting to collect a

24 ³³ *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992); *Baker*, 677 F.2d at 777.

25 ³⁴ *Baker*, 677 F.2d at 777.

26 ³⁵ *Turner v. Cook*, 362 F.3d 1219, 1227-1228 (9th Cir. 2004); *Romine v. Diversified
 27 Collection Servs.*, 155 F.3d 1142, 1145 (9th Cir. 1998); *De Coito v. Unifund Corp.*, 2004 U.S. Dist.
 LEXIS 23729 at *8 (D. HI January 4, 2004); *United States v. Trans Continental Affiliates*, 1997
 28 U.S. Dist. LEXIS 388 at *8 (N.D. Cal. January 8, 1997).

1 “debt” as that term is defined by 15 U.S.C. § 1692a(5). Finally, to prove her claims under the
 2 RFDCPA, Plaintiff must show that Defendants were attempting to collect a “consumer debt” as that
 3 term is defined by Cal. Civil Code § 1788.2(f).

4 Defendants’ “primary business” is collecting or attempting to collect debts owed or alleged
 5 to be owed to third-parties.³⁶ In fact, Defendants advertise on their website that they “specialize in
 6 subrogation, commercial and consumer collections” and Defendant, Brachfeld, purportedly “has
 7 over ten years of experience in the areas of Creditor’s Rights and Debt Collections.”³⁷

8 In this case, Defendants were attempting to collect a consumer credit card debt originally
 9 owed to Capital One Bank, which was later assigned to NCO Financial Systems, Inc.³⁸ The debt
 10 originally owed to Capital One Bank by Plaintiff was incurred for personal, family or household
 11 purposes.³⁹ Defendants have no evidence to dispute that the debt originally owed to Capital One
 12 Bank was incurred for purposes other than for Plaintiff’s “personal, family, or household purposes.”
 13 There is no factual dispute that Plaintiff is a “consumer”, that Defendants are each a “debt collector”
 14 and that Defendants were attempting to collect a “debt” as that term is defined by the FDCPA and
 15 a “consumer debt” as that term is defined by the RFDCPA. Therefore, Plaintiff is entitled to
 16 summary judgment or summary adjudication on these threshold elements pursuant to Fed. R. Civ.
 17 P. 56(d).

18 **D. DEFENDANTS HAVE VIOLATED NUMEROUS PROVISIONS OF THE FDCPA.**

19 Because the FDCPA is a strict liability statute, proof of one violation is sufficient to support
 20 summary judgment for a Plaintiff.⁴⁰ In light of this strict liability standard, a consumer need not
 21

22 ³⁶ Schwinn Declaration ¶15, Exhibit “12.”

23 ³⁷ *Id.*

24 ³⁸ Complaint (Doc. 1) ¶¶ 10 and 11; Owens Declaration ¶¶ 4, 5 and 6; Exhibit “1.”

25 ³⁹ Complaint (Doc. 1) ¶¶10, 29 and 38; Owens Declaration ¶4.

26 ⁴⁰ See *Hartman v. Meridian Financial Services, Inc.*, 191 F. Supp. 2d 1031, 1046-47 (W.D.
 27 Wis. 2002) (“One false or misleading statement in a collection letter renders the entire
 28 communication false or misleading and constitutes one violation”); See also, *Cacace*, 775 F. Supp.
 at 505; *Traverso v. Sharinn*, 1989 U.S. Dist. LEXIS 19100 at *4 (D. Conn. Sept. 15, 1989); *Picht*

1 show intentional conduct by the debt collector in order to be entitled to damages,⁴¹ and there are no
 2 unimportant violations.⁴² Further, no proof of actual deception or actual damages is required to
 3 obtain statutory remedies.⁴³

4 **1. DEFENDANTS VIOLATED THE FDCPA BY SENDING A COLLECTION
 5 LETTER IN AN ENVELOPE WHICH DISPLAYED PLAINTIFF'S
 6 PERSONAL FINANCIAL INFORMATION.**

7 On or about September 18, 2006, Defendants' deposited a collection letter in the United
 8 States Mail addressed to Plaintiff.⁴⁴ Defendants' collection letter was mailed in an envelope which
 9 contained a window through which Plaintiff's original creditor, Capital One Bank, and Defendants'
 10 file number "NCO06680," could be seen by anyone who handled the letter.⁴⁵ The FTC has stated
 11 that "[a] debt collector may not send a written message that is easily accessible to third parties. For
 12 example, he may not use a computerized billing statement that can be seen on the envelope itself."⁴⁶
 13 Further, courts have found violations of the FDCPA when information regarding the creditor or debt
 14 being collected are disclosed through an envelope window.⁴⁷

15 *v. Jon R. Hawks, Ltd.*, 236 F.3d 446, 451 (8th Cir. 2001); *Bentley*, 6 F.3d at 62.

16 ⁴¹ *See Pittman v. J.J. Mac Intyre Co. of Nevada, Inc.*, 969 F. Supp. 609, 613 (D. Nev. 1997);
 17 *See also Russell*, 74 F.3d at 36 ("Because the Act imposes strict liability, a consumer need not show
 18 intentional conduct by the debt collector to be entitled to damages.").

19 ⁴² *Bentley*, 6 F.3d at 63 (no non-actionable violations of FDCPA); *Taylor*, 103 F.3d at 1234
 20 (failure "to comply with any provision of the FDCPA" leads to liability).

21 ⁴³ *Baker*, 677 F.2d at 780; *Clomon*, 988 F.2d at 1319.

22 ⁴⁴ Complaint (Doc. 1) ¶ 16; Owens Declaration ¶¶ 7, 8 and 9; Exhibit "1."

23 ⁴⁵ Complaint (Doc. 1) ¶18; Owens Declaration ¶¶ 10 and 11; Exhibit "2."

24 ⁴⁶ FTC Official Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50,104 (1988).

25 ⁴⁷ *Hodges v. Armada (In re Hodges)*, 342 B.R. 616, 625 (E.D. Bankr. Wash. 2006) (Debt
 26 collector violated the FDCPA by sending a letter in an envelope which contained a window through
 27 which anyone could see "You have a total of \$ 1,278.04 owing at this . . ."); *Shulick v. Credit
 28 Bureau Collection Services*, 2004 U.S. Dist. LEXIS 1552 *3-4 (E.D. Pa. February 3, 2004) (Debt
 collector violated the FDCPA by sending a letter in an envelope which contained a window through
 which the creditor "Verizon" could be seen.).

1 Defendants violated 15 U.S.C. § 1692c(b), which provides as follows:

2 Except as provided in section 804 [15 U.S.C. § 1692b], without the prior consent of
 3 the consumer given directly to the debt collector, or the express permission of a court
 4 of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment
 5 judicial remedy, a debt collector may not communicate, in connection with the
 collection of any debt, with any person other than the consumer, his attorney, a
 consumer reporting agency if otherwise permitted by law, the creditor, the attorney
 of the creditor, or the attorney of the debt collector.

6 Defendants mailed the collection letter in an envelope which contained a window through which
 7 anyone could see the creditor and account number related to the consumer debt being collected,
 8 thereby violating the FDCPA, 15 U.S.C. § 1692c(b).

9 Further, Defendants violated 15 U.S.C. §§ 1692d and 1692d(3). 15 U.S.C. § 1692d provides:

10 A debt collector may not engage in any conduct the natural consequence of which
 11 is to harass, oppress, or abuse any person in connection with the collection of a debt.
 Without limiting the general application of the foregoing, the following conduct is
 12 a violation of this section:

13 . . .

14 (3) The publication of a list of consumers who allegedly refuse to pay debts, except
 to a consumer reporting agency or to persons meeting the requirements of section
 15 603(f) or 604(3) of this Act [15 U.S.C. §§ 1681a(f) or 1681b(3)].

16 Defendants violated 15 U.S.C. § 1692d by mailing a collection letter in an envelope which disclosed
 17 information about the debt, as this is conduct the natural consequence of which is harassing,
 18 oppressive and abusive. Defendants violated 15 U.S.C. § 1692d(3) because the envelope published
 Plaintiff's personal financial information to third parties, namely, Plaintiff's roommates.⁴⁸

19 Finally, Defendants violated 15 U.S.C. § 1692f, which provides, "A debt collector may not
 20 use unfair or unconscionable means to collect or attempt to collect any debt." By displaying
 21 Plaintiff's personal financial information to third parties, including her roommates, in connection
 22 with the collection of a consumer debt, Defendants engaged in unfair and unconscionable means of
 23 collection, thereby violating 15 U.S.C. § 1692f.

24 **2. DEFENDANTS USED FALSE BUSINESS NAMES INSTEAD OF THEIR
 25 TRUE BUSINESS NAME WHILE ATTEMPTING TO COLLECT A
 CONSUMER DEBT FROM PLAINTIFF.**

26 The collection letter dated September 18, 2006, states on the signature line that the name of

27 _____

28 ⁴⁸ Owens Declaration ¶ 10.

1 Defendants' business is "Law Offices of Brachfeld & Associates, P.C."⁴⁹ The third paragraph of
 2 the collection letter and the return address on the envelope in which it was mailed stated that
 3 "Brachfeld & Associates, P.C." was the name of Defendants' business.⁵⁰ However, neither the
 4 "Law Offices of Brachfeld & Associates, P.C." nor "Brachfeld & Associates, P.C." are California
 5 corporations or foreign corporations authorized to conduct business in the state of California.⁵¹ The
 6 true legal name under which Defendants conduct business appears to be "Erica L. Brachfeld, A
 7 Professional Corporation" as that is the only corporation with the word "Brachfeld" in its name in
 8 the state of California.⁵²

9 Defendants have violated 15 U.S.C. § 1692e(14) which provides:

10 A debt collector may not use any false, deceptive, or misleading representation or
 11 means in connection with the collection of any debt. Without limiting the general
 application of the foregoing, the following conduct is a violation of this section:

12 (14) The use of any business, company, or organization name other than the true
 13 name of the debt collector's business, company, or organization.

14 Defendants' September 18, 2006, collection letter violates the FDCPA because the business name
 15 "Law Offices of Brachfeld & Associates, P.C." was falsely used instead of the true name of
 16 Defendants' business entity, "Erica L. Brachfeld, A Professional Corporation." Further, the
 17 collection letter and envelope in which it was mailed violate the FDCPA because they falsely state
 18 Defendants' business entity is named "Brachfeld & Associates, P.C." instead of the true name of
 19 the entity, "Erica L. Brachfeld, A Professional Corporation."

20 **E. B&A HAS VIOLATED THE RFDCPA.**

21 In addition to the violations of the federal Fair Debt Collection Practices Act alleged against
 22 all Defendants, Plaintiff also alleges several violations of the California Rosenthal Fair Debt
 23 Collection Practices Act against Defendant, ERICA L. BRACHFELD, A PROFESSIONAL

24
 25 ⁴⁹ Complaint (Doc. 1) ¶20; Owens Declaration ¶12; Exhibit "1."

26 ⁵⁰ Complaint (Doc. 1) ¶22; Owens Declaration ¶13; Exhibits "1" and "2."

27 ⁵¹ Schwinn Declaration ¶¶ 7-14; Exhibits "4," "5," "6," "7," "8," "10" and "11."

28 ⁵² Schwinn Declaration ¶12; Exhibit "9."

1 CORPORATION (“B&A”).

2 **1. B&A IS A “DEBT COLLECTOR” WITHIN THE MEANING OF**
CALIFORNIA CIVIL CODE § 1788.2(c).

3
4 Cal. Civil Code § 1788.2(c) provides as follows:

5 The term “debt collector” means any person who, in the ordinary course of business,
6 regularly, on behalf of himself or herself or others, engages in debt collection. The
7 term includes any person who composes and sells, or offers to compose and sell,
forms, letters, and other collection media used or intended to be used for debt
collection, but does not include an attorney or counselor at law.

8 This Court has stated in several cases that a law firm is a “debt collector” within the meaning
9 of the RFDCPA.

10 Interpreting the plain language of the statute, it appears clear on its face that CA
11 FDCPA “does not include an attorney.” In fact, during oral argument, Plaintiff
conceded that the CA FDCPA does not apply to Defendant Boyajian, who is an
12 attorney. Thus, this Court denies Plaintiff’s sub-class of the CA FDCPA as it
pertains to Defendant Boyajian.

13 However, giving section § 1788.2(c) the same reading does not yield the same result
14 for Defendant JBC. The statute merely states that it does not apply to “attorney” or
“counselor at law”; it does not outright exclude “law firms”. Since the legislature
15 specifically excluded attorneys from the statute but was silent on law firms, this
Court presumes that the legislature did not intend to exclude law firms. In addition,
16 taken the allegations from Plaintiff’s Complaint as true, Defendant JBC, in the
ordinary course of business, regularly, on behalf of itself or others, engages in debt
collection using form letters sent through the United States Postal Office, Defendant
17 JBC is a “debt collector” as defined by CA FDCPA.⁵³

18 As in *Ables v. JBC Legal Group*, Plaintiff in this case does not assert claims under the
19 RFDCPA against the individual attorney Defendant, Brachfeld, only the law firm, B&A.⁵⁴ It is
20 undisputed that B&A is a California corporation engaged in the business of collecting debts in this
21 state, that the principal business of B&A is the collection of debts using the mails and telephone, and

22
23 ⁵³ *Ables v. JBC Legal Group, P.C.*, 227 F.R.D. 541, 547-48 (N.D. Cal. 2005) (Ware), *see also, Navarro v. Eskanos & Adler*, 2007 U.S. Dist. LEXIS 15046 (N.D. Cal. February 20, 2007) (J. Alsup) (Court granted Plaintiff summary judgment on the issue of whether the law firm Eskanos & Adler, APC, was a debt collector under the RFDCPA); *Adams v. CIR Law Offices, LLP*, 2007 U.S. Dist. LEXIS 63808 (S.D. Cal. August 29, 2007) (Court denied motion to dismiss RFDCPA claims against a law firm); *Lutge v. Eskanos & Adler, P.C.*, 2007 U.S. Dist. LEXIS 40570 (N.D. Cal. May 23, 2007) (J. White) (RFDCPA claim against the attorney Eskanos was dismissed, but the RFDCPA claim against the law firm Eskanos & Adler remained.).

24
25
26
27
28 ⁵⁴ Complaint (Doc. 1) ¶¶ 34-45.

1 that B&A regularly attempts to collect debts alleged to be due another.⁵⁵

2 There is no factual dispute regarding B&A's corporate form or the principal business in
 3 which it engages. Whether B&A is a "debt collector" as that term is defined by Ca. Civil Code §
 4 1788.2(c) is a question of law on which Plaintiff is entitled to summary adjudication pursuant to Fed.
 5 R. Civ. P. 56(d).

6 **2. B&A HAS VIOLATED CAL. CIVIL CODE § 1788.17.**

7 Cal. Civil Code § 1788.17 provides as follows:

8 Notwithstanding any other provision of this title, every debt collector collecting or
 9 attempting to collect a consumer debt shall comply with the provisions of Sections
 10 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k
 11 of, Title 15 of the United States Code.

12 As explained above, B&A has violated 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3), 1692e(14),
 13 and 1692f. Each of these violations of the FDCPA state a separate violation under Cal. Civil Code
 14 § 1788.17, which requires compliance with the FDCPA.

15 **3. B&A HAS VIOLATED CAL. CIVIL CODE §§ 1788.12(c), 1788.12(d) AND
 16 1788.13(a).**

17 As explained above, B&A mailed Plaintiff a letter in an envelope which contained a window
 18 through which information about Plaintiff's debt could be seen by anyone who handled the letter.
 19 By doing so, B&A disclosed the nature or existence of a debt in violation of Cal. Civil Code §
 20 1788.12(c). B&A also communicated with Plaintiff "by means of a written communication that
 21 display[ed] or convey[ed] any information about the consumer debt . . . which [was] intended both
 22 to be seen by any other person and also to embarrass the debtor" in violation of Cal. Civil Code §
 23 1788.12(d). Finally, B&A used a false business name, thereby communicating "with the debtor
 24 other than in the name . . . of the debt collector" in violation of Cal. Civil Code § 1788.13(a).

25 **F. THIS COURT SHOULD AWARD PLAINTIFF THE MAXIMUM STATUTORY
 26 DAMAGE AMOUNT OF \$1,000 UNDER THE FDCPA.**

27 The maximum statutory damage award available under the FDCPA is a modest \$1,000.

28 _____
 29 ⁵⁵ Complaint (Doc. 1) ¶ 7; Schwinn Declaration ¶¶ 12 and 15; Exhibits "9" and "12."

1 Courts have, therefore, awarded the maximum amount even when the violations found were less
 2 numerous and egregious than those herein. For example, in *Riviera v. M.A.B.*,⁵⁶ the court awarded
 3 the maximum \$1,000 because the validation notice appeared on the back of the letter, in relatively
 4 small print, with no reference to it on the front of the letter. Thus, even though the notice was
 5 accurate, the court determined a \$1,000 award was appropriate. Furthermore, in *Tolentino v.*
 6 *Friedman*,⁵⁷ the Seventh Circuit upheld the maximum statutory award of \$1,000 despite finding that
 7 violation of only one provision of the FDCPA had been proven. In that case the debt collector had
 8 included a disclosure required by 15 U.S.C. § 1692e(11) in its initial notice, but had failed to include
 9 it in a subsequent notice. The present case involves at least 6 violations of the FDCPA, including
 10 disclosure of Plaintiff's private financial information to her roommates. Thus, the violations herein
 11 are more numerous and meaningful than in those cases, and therefore the Court should award the
 12 maximum amount of statutory damages under 15 U.S.C. § 1692k(a)(2)(A), which is \$1,000.

13 **G. PLAINTIFF SHOULD BE AWARDED \$1,000 UNDER CAL. CIVIL CODE §
 14 1788.30(b).**

15 The Cal. Civil Code § 1788.30 states that any debt collector who fails to comply with any
 16 provision is liable to such debtor in an amount equal to his/her actual damages, and in the case of
 17 a debt collector who willfully and knowingly violates the RFDCPA, the Court may award a penalty
 18 in an amount not less than \$100 nor greater than \$1,000. Cal. Civil Code § 1788.30(b).

19 In this case, B&A has willfully and knowingly violated Cal. Civil Code § 1788.13(a) by
 20 collecting consumer debts using a false name. This statutory provision is remedied by the statutory
 21 penalty provisions of Cal. Civil Code § 1788.30(b). Thus, Plaintiff should be awarded the full
 22 \$1,000 statutory penalty under Cal. Civil Code § 1788.30(b).

23 **H. PLAINTIFF SHOULD BE AWARDED \$1,000 UNDER CAL. CIVIL CODE § 1788.17.**

24 In this case, B&A has violated Cal. Civil Code § 1788.17 which is remedied by the statutory
 25 damages provisions of 15 U.S.C. § 1692k(a)(2)(A). Thus, Plaintiff should be awarded the full

26
 27 ⁵⁶ 682 F. Supp. 174 (W.D.N.Y. 1988).

28 ⁵⁷ 46 F.3d 645 (7th Cir. 1995).

1 \$1,000 in statutory damages under Cal. Civil Code § 1788.17.

2 **I. BOTH CONGRESS AND THE CALIFORNIA LEGISLATURE HAVE EXPRESSED
3 THEIR INTENT THAT THE REMEDIES FOR VIOLATIONS OF THE FDCPA AND
4 RFDCPA BE CUMULATIVE.**

5 Cal. Civil Code § 1788.32 states “The remedies provided herein are intended to be
6 cumulative and are in addition to any other procedures, rights, or remedies under any other provision
7 of law.” Thus, a violation of the federal statute can lead to damages under the federal FDCPA and
8 a violation of the California statute leads to damages under the RFDCPA. Indeed, the FDCPA
expressly states:

9 [t]his subchapter does not annul, alter, or affect, or exempt any person subject to the
10 provisions of this subchapter from complying with the law of any State with respect
11 to debt collection practices, except to the extent that those laws are inconsistent with
any provision of this subchapter, and then only to the extent of the inconsistency.
15 U.S.C. § 1692n.

12 Moreover, courts both within and outside the Ninth Circuit, have allowed statutory damages
13 under both federal and state consumer protection statutes.⁵⁸ Thus, the Court should not be reluctant
14 to assess the maximum possible statutory damages under both federal and state law. As this Court
15 has noted, Cal. Civil Code § 1788 was amended to expand the remedies of the RFDCPA, including
16 an expansion of the statutory damages available under the state law.⁵⁹

17 Additionally, this Court has concluded that rather than drafting new language to the
18 RFDCPA, the legislature simply incorporated entire sections of the FDCPA by reference.⁶⁰ Indeed,
19 this Court stated “California simply incorporated by reference the text of certain federal provisions
20 into the CFDCPA, rather than copying them verbatim into the California code. Any resulting
21 liability, however, remains a state claim.” *Id.* In a separate case, this Court went on to hold that a

23
24 ⁵⁸ *Sakuma v. First National Credit Bureau*, 1989 U.S. Dist. LEXIS 19120 (D. HI. November
25 15, 1989); *Mann v. Acclaim*, 348 F. Supp. 2d 923 (S.D. Ohio 2004); *Chapman v. ACB Business
Services, Inc.*, 1997 U.S. Dist. LEXIS 23743 (S.D. W.V. February 13, 1997).

26 ⁵⁹ *Abels*, 227 F.R.D. at 548 (The mandatory language in the amendment—“ . . . shall be
27 subject to the remedies in Section 1692k” leaves little doubt as to the intent of the legislature to
broaden the remedies for RFDCPA.)

28 ⁶⁰ *Alkan v. Citimortgage, Inc.*, 336 F. Supp. 2d 1061, 1065 (N.D. Cal. 2004).

1 violation of 15 U.S.C. § 1692g was also a violation of Cal. Civil Code § 1788.17.⁶¹ Thus, by
 2 incorporating 15 U.S.C. § 1692k by reference (and its statutory damages of \$1,000), the California
 3 legislature chose to make the additional \$1,000 available, as a matter of state law, when it enacted
 4 Cal. Civil Code § 1788.17.

5 **J. PLAINTIFF HAS A STATUTORY RIGHT TO ATTORNEY'S FEES AND COSTS.**

6 Both the federal FDCPA and California RFDCPA direct the Court to award attorney's fees
 7 to a prevailing consumer. 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code § 1788.30(c). A number of
 8 cases decided under 15 U.S.C. § 1692k have held that an award of attorney fees and costs is required
 9 if the plaintiff prevails.⁶² Thus, the Court should award Plaintiff her reasonable attorney fees and
 10 costs incurred in this matter.

11 **VI. CONCLUSION**

12 For the reasons set forth above, Plaintiff, as a matter of law, is entitled to summary judgment:
 13 (1) declaring that Defendants' collection letter (Exhibit "1") violates the Fair Debt Collection
 14 Practices Act, 15 U.S.C. §§ 1692c(b), 1692d, 1692d(3), 1692e(14), and 1692f; (2) declaring that
 15 the envelope Defendants' mailed the collection letter in (Exhibit "2") violates the Fair Debt
 16 Collection Practices Act, 15 U.S.C. § 1692e(14); (3) declaring that Defendants' collection letter
 17 (Exhibit "1") violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§
 18 1788.13(a) and 1788.17; (4) declaring that the envelope Defendants' mailed the collection letter in
 19 (Exhibit "2") violates the Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§
 20 1788.12(c), 1788.12(d), 1788.13(a), and 1788.17; (5) awarding Plaintiff statutory damages in an
 21

22 ⁶¹ *Edstrom v. A.S.A.P. Collection Services*, 2005 U.S. Dist. LEXIS 2773, *15 (N.D. Cal.
 23 February 22, 2005).

24 ⁶² See, e.g. *Zagorski v. Midwest Billing Services, Inc.*, 178 F.3d 116 (7th Cir. 1997) (holding
 25 it was an abuse of discretion not to award attorney's fees following a stipulated judgment in the
 26 amount of \$100; and directing the court to award fees sufficient to compensate the attorney for the
 27 time spent on the case in order to encourage enforcement of the FDCPA); *Pipiles v. Credit Bureau,*
 28 *Inc.*, 886 F.2d 22 (2d Cir. 1989) (directing trial court to award fees on remand despite the lack of
 actual or statutory damages because Plaintiff had demonstrated that Defendant violated the FDCPA);
Perez v. Perkiss, 742 F. Supp. 883 (D. Del. 1990) (awarding Plaintiffs' legal services attorneys
\$10,110 after a half-day jury trial in which Plaintiff was awarded \$1,200 in damages).

1 amount not exceeding \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); (6) awarding Plaintiff
2 statutory damages in an amount not less than \$100 nor greater than \$1,000 pursuant to Cal. Civil
3 Code § 1788.30(b); (7) awarding Plaintiff statutory damages in an amount not exceeding \$1,000
4 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by Cal. Civil Code § 1788.17; (8) awarding
5 Plaintiff the costs of this action and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3)
6 and Cal. Civil Code §§ 1788.30(c) and 1788.17; and (9) awarding Plaintiff such other and further
7 relief as may be just and proper.

8 In the alternative, Plaintiff is entitled to partial summary adjudication pursuant to Fed. R.
9 Civ. P. 56(d) on the following factual issues: (1) Plaintiff is a “consumer” as that term is defined
10 by 15 U.S.C. § 1692(a)(3) and a “debtor” as that term is defined by Cal. Civil Code § 1788.2(h);
11 (2) Defendants are each a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6); (3)
12 Defendant, B&A, is a “debt collector” as that term is defined by Cal. Civil Code § 1788.2(c); and
13 (4) the debt being collected by Defendants was a “debt” as that term is defined by 15 U.S.C. §
14 1692a(5) and a “consumer debt” as that term is defined by Cal. Civil Code § 1788.2(f).

CONSUMER LAW CENTER, INC.

By: /s/ Fred W. Schwinn

Fred W. Schwinn, Esq.
Attorney for Plaintiff
SUSAN RAE OWENS